



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 30, 1996

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR96-1334

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 31419.

The Harris County District Attorney (the "district attorney") received a request for all expenses paid for transportation, meals, lodging, and other expenses as required by law for every witness in cause number 94-20303. You claim that the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The district attorney has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The district attorney must meet both prongs of this test for information to be excepted under section 552.103(a).

Here, the requested information is for payments made to reimburse witnesses for travel expenses. We believe that the district attorney has not established the relatedness of this requested information to the subject matter of the litigation. We conclude that this information relates more to the expenditure and receipt of public funds rather than the subject matter of any litigation handled by the district attorney. Therefore, the district attorney may not withhold this information under section 552.103 of the Government Code.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. The requested documents do not fall within this exception, as they are not "privileged information" communicated from attorney to client. Therefore, the district attorney may not withhold this information under section 552.107 of the Government Code.

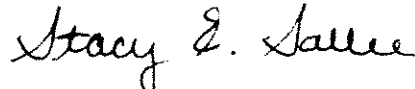
Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We conclude that the district attorney may withhold the name and address of the witness in this criminal case under section 552.108. However, we do not believe that the exception applies to the remaining information on these documents. We believe such information only indirectly "deals with the detection, investigation, or prosecution of crime" and more directly deals with the expenditure and receipt of public funds. Therefore, the district attorney may not withhold this information under section 552.108 of the Government Code.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

¹We note that there is a social security number on one of the documents submitted to this office for review. Federal law may prohibit disclosure of the social security number. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security number is confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Stacy E. Sallee".

Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 31419

Enclosures: Submitted documents

cc: Mr. E. L. Wheeler
P.O. Box 3584
Houston, Texas 77253
(w/o enclosures)